002-25 REISSUE

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE REISSUE APPLICATION OF :

ROBERT R. MILKS : GROUP ART UNIT: (Anticipated)

FILED: HEREWITH :

PATENT NO: 5,198,467 : EXAMINER: C. Elmore (Anticipated)

GRANTED: MARCH 30, 1993 :

FOR: INSECTICIDE FOR IMPORTED FIRE ANTS AND OTHER INSECT PESTS

37 CFR 1.175(a) DECLARATION OF
ROBERT R. MILKS

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

(1) This declaration is directed to the reissue application to which it is attached.

(2) The inventor of the application is Robert R. Milks.

(3) The residence of the inventor is: 388 Dellwood Drive, Eugene, OR Oregon 97405.

(4) The country of citizenship of the inventor is the United States of America.

(5) The inventor is the sole inventor of the invention claimed.

(6) The person making this declaration has reviewed and understands the contents of the specification, including the claims.

(7) The person making this declaration believes the named inventor to be the original and first inventor of the subject matter which is claimed and for which a patent is sought.

(8) The person making this declaration acknowledges the duty to disclose to the Office all information known to that person to be material to patentability as defined in § 1.56.

(9) The applicant verily believes claims 1-11 in the original patent to be wholly invalid. Specifically, the applicant verily believes that those claims in the original patent are either anticipated by or unpatentable over the prior art.

(10) It is claimed that claim 1-11 in the original patent are invalid by reason of the patentee's claiming more than he had the right to claim in the patent. The reason for this is set forth in the table below -- which, of course, was prepared by my counsel:

Language of the Original Claims	Comments as to Patentability
1. A delayed-action insecticide comprising an insecticidal vegetable oil insoluble anionic fluorochemical surfactant, the surfactant being applied in an insecticidal concentration in solution to a carrier in the form of dispersible non-liquid edible food to form a toxic bait.	Claim 1 is anticipated by Vander Meer et al., "Fluoroaliphatic Sulfones: A New Class of Delayed-action Insecticides for Control of Solenopsis Invicta (Hymenoptera: Formicidae)," 78 Journal of Economic Entomology 1190 (1985). A copy of this article is the party Milks's Exhibit 15. Although claim 1 as presented appears to recite a composition, the only element positively recited is an insoluble anionic fluorochemical surfactant. As the Vander Meer et al. article teaches a composition containing an insecticidal vegetable oil insoluble anionic flurochemical surfactant, that reference anticipates the claim. Claim 1 is also anticipated by sales by 3M of compounds under the trademark "FLUORAD." These compounds are fluorochemical surfactants and thus meet all the requirements of claim 1. A copy of a 3M catalog showing this is the party Milks's Exhibit 13.
2. The delayed-action insecticide of claim 1 wherein the anionic fluorochemical surfactant is a potassium perfluoroalkyl sulfonate having a chemical formula of $C_nF_{2n+1}SO_3K$, where n equals 6 or 8.	Claim 2 is anticipated by the Vander Meer et al. article, which teaches an insecticidal compound of the formula $C_8H_{17}SO_3K$. Claim 2 is also anticipated by sales by 3M of FC-95, which is a trademark for compounds of the formula

	$C_nF_{2n+1}SO_3K$, where n equals 6 or 8. See the party Milks's Exhibit 13.
3. The delayed-action insecticide of claim 1 wherein the anionic fluorochemical surfactant is a potassium perfluoroalkyl cyclohexyl sulfonate having a chemical formula of $C_nF_{2n-1}SO_3K$, where n equals 7 or 8.	Claim 3 is anticipated by sales by 3M of FC-98, which is a trademark for $C_8H_{17}SO_3K$. See the party Milks's Exhibit 13.
4. The delayed-action insecticide of claim 1 wherein the anionic fluorochemical surfactant is dissolved in a solvent which consists of a member selected from the group consisting of acetone and methanol.	Claim 4 does not further limit the scope of claim 1. The intended activity of dissolving the fluorochemical surfactant in a solvent does not further define this element or add a new element.
5. The delayed-action insecticide of claim 1 wherein the carrier consists of a member selected from the group consisting of dried yellow corn meal, corn grit, crushed wheat, and cracked wheat.	Claim 5 does not further limit the scope of claim 1. The intended activity of combining the fluorochemical surfactant does not further define this element or add a new element.
6. The delayed-action insecticide of claim 1 wherein the insecticide further comprises soybean oil subsequently applied to the carrier as an attractant.	Although the fluoro-chemical surfactant is apparently intended to be combined with a carrier, a carrier element is absent from the claims.
7. The delayed-action insecticide of claim 1 wherein the anionic fluorochemical surfactant has a concentration of 0.05 to 1.0% by weight.	Claim 7 is unpatentable over the Vander Meer et al. article as discussed above for claim 1 as no criticality has been shown for the recited range.

8. The delayed-action insecticide of claim 7 wherein the anionic fluorochemical surfactant concentration is approximately 0.1 to 0.5% by weight.	Claim 8 is unpatentable over the Vander Meer et al. article as no criticality has been shown for the recited range.
9. The delayed-action insecticide of claim 6 wherein the anionic fluorochemical surfactant has a concentration of 0.3 to 0.5% by weight, the carrier has a concentration of approximately 9.47 to 94.5% by weight, and the soybean oil has a concentration of approximately 5.0% by weight.	Claim 9 is unpatentable over the Vander Meer et al. article as no criticality has been shown for the recited range. Specifying the concentrations of attractant and carrier does not further limit claim 6, as these are not elements of the claimed composition.
10. The delayed-action insecticide of claim 2 wherein the anionic fluorochemical surfactant has a concentration of 0.05 to 1.0% by weight.	Claim 10 is unpatentable over the Vander Meer et al. article as discussed above for claim 7 as no criticality has been shown for the recited range.
11. The delayed-action insecticide of claim 10 wherein the anionic fluorochemical surfactant concentration is approximately 0.1 to 0.5% by weight.	Claim 11 is unpatentable over the Vander Meer et al. article as no criticality has been shown for the recited range.

(11) The error relied upon is that claims 1-11 in the original patent failed to specify that the carrier is part of the claimed composition. That error arose through an oversight on the part of the attorney that prepared the application a continuation-in-part of which matured into the original patent.

(12) The existance of the error was recognized on or about December 01, 1995 during the preparation of preliminary motions in the interference in which the original patent is involved.

(13) The said error arose "without any deceptive intention" on the part of the applicant.

(14) Applicant acknowledges the duty to disclose to the office all information known to him to be material to patentability as defined in § 1.56.

(15) I declare under penalty of perjury that the foregoing is true and correct.

Date: 12-18-95

Robert R. Mills